



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 38] नई दिल्ली, सितम्बर 15—सितम्बर 21, 2013, शनिवार/भाद्र 24—भाद्र 30, 1935
No. 38] NEW DELHI, SEPTEMBER 15—SEPTEMBER 21, 2013, SATURDAY/BHADRA 24—BHADRA 30, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 11 सितम्बर, 2013

का. आ. 1984.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 6 के उप-विनियम (3) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा नीचे अनुसूची में दिए गए उत्पादों की मुहरांकन शुल्क अधिसूचित करता है :

अनुसूची

भारतीय मानक संख्या	भाग	अनु	वर्ष	उत्पाद	इकाई	न्यूनतम मुहरांकन शुल्क		इकाई दर स्लैब	स्लैब में इकाईयां	शेष	प्रचालन तिथि
						बड़े पैमाने पर	छोटे पैमाने पर				
15939	-	-	2011	कीटनाशक-बाईफेन्थरीन आर्द्रकरणीय पाऊंडर-विशिष्ट	एक किलोग्राम	रु. 45000	रु. 38000	रु. 0.90	सभी	-	11-09-2013
4375	-	-	1975	सूती निटेड स्पोर्ट्स शर्ट	100 नम्बर	रु. 41000	रु. 35000	रु. 2.75	सभी	-	11-09-2013

[सं. सीएमडी-2/जी-18]

पी. के. गम्भीर, वैज्ञानिक 'जी' एवं प्रधान (प्रमाणन)

MINISTRY OF CONSUMER AFFAIRS FOOD AND PUBLIC DISTRIBUTION**(Department of Consumer Affairs)****(BUREAU OF INDIAN STANDARDS)**

New Delhi, the 11th September, 2013

S.O. 1984.—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the Marking fee for the products given in the Schedule :

SCHEDULE

IS No.	Part	Sec.	Year	Product	Units	Minimum Marking Fee		Unit Rate Slab 1 Rs.	Units in Slab-1	Remain- ing	Effective Date
						Large Scale	Small Scale				
15939	-	-	2011	Pesticide-Bifenthrin Wettable Powder (WP)	1 Kg.	Rs. 45000	Rs. 38000	Rs.0.90	All	-	11-09-2013
4375	-	-	1975	Cotton Knitted Sports Shirts	100 (numbers)	Rs. 41000	Rs. 35000	Rs.2.75	All	-	11-09-2013

[No. CMD-II/G-18]

P. K. GAMBHIR, Scientist 'G' and Chief (Certification)

संचार एवं सूचना प्रौद्योगिकी मंत्रालय**(डाक विभाग)**

नई दिल्ली, 11 सितम्बर, 2013

का. आ. 1985.—राजभाषा नियम (संघ के शासकीय प्रयोजनों के लिए प्रयोग), 1976 के नियम 10 के उप-नियम (4) के अनुसरण में केन्द्र सरकार, डाक विभाग के अधीनस्थ कार्यालय व्यवसाय विकास एवं विपणन निदेशालय, नई दिल्ली जिसके 80 प्रतिशत से अधिक अधिकारियों एवं कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[सं. 11017-1/2011-रा.भा.]

नरेश कुमार, निदेशक (राजभाषा)

MINISTRY OF COMMUNICATION AND INFORMATION TECHNOLOGY**(Department of Posts)**

New Delhi, the 11th September, 2013

S.O. 1985.—In pursuance of Rule 10(4) of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies Business Development and Marketing Directorate, New Delhi-110001. Subordinate Office of the Department of Posts where 80% Officers/Officials has acquired the working knowledge of Hindi.

[No. 11017-1/2011-O.L.]

NARESH KUMAR, Director (O.L.)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 21 अगस्त, 2013

का.आ. 1986.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 65/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27-7-2013 को प्राप्त हुआ था।

[सं. एल-12011/138/2006-आई आर (बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 21st August, 2013

S.O. 1986. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 27-7-2013.

[No. L-12011/138/2006-IR (B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
YESWANTHPUR, BANGALORE**

Dated : 26th June, 2013

PRESENT :**Shri S. N. Navalgund, Presiding Officer****C.R. No. 65/2007**

I Party

II Party

Sh. R. Sadashiva,
S/o Shri Ramappa,
C/o Kariyanna,
'Amar Nilaya',
Chikkabidarkallu Main
Road, Nagasandra Post,
Bangalore-560 073.

The General Manager (P),
Canara Bank, Head Office,
Personnel Wing,
I.R. Section,
112, J. C. Road,
BANGALORE-560 002.

APPEARANCES :

I Party : Shri Muralidhara Advocate

II Party : Shri T R K Prasad Advocate

**ORDERS ON MAINTAINABILITY AND FAIRNESS
OF THE DOMESTIC ENQUIRY TAKEN UP AS
PRELIMINARY ISSUES**

1. In this reference made by the Central Government for adjudication as to:

“Whether the action of the management of Canara Bank in imposition of punishment of stoppage of five increments for a period of five years with cumulative effect on Shri R. Sadashiva, Sub-staff, Canara Bank, Shahbad Branch, Gulbarga district vide order dated 09.03.2005 is legal and ‘justified ? If not, to what relief the workman is entitled and from which date?’”

2. In view of the assertion made by the I Party in his claim statement that he was not furnished with copies of the documents and statement of witnesses along with the charge sheet and that charge sheet was vague without consisting essential details and that he was denied of a proper opportunity to submit his written statement and that he was not given opportunity to verify the Originals of the documents and the statement of the witnesses relied upon in support of the charge sheet etc. and its denial by the II Party the following issue was raised as a Preliminary Issue :

“Whether the Domestic Enquiry held against the I party by the II Party is fair and proper?”

3. To substantiate the above issue the II party while examining Enquiry Officer as MW 1 got exhibited Ex M-1 to Ex M-15 the detailed description of which are narrated in the Annexure. The learned advocate for I Party who cross-examined MW 1 since submitted that he has no evidence on the Preliminary Issue the matter was posted for arguments on the said issue. Later, when the learned advocate appearing for the II Party insisted that in view of a specific contention taken in the counter statement that the reference is not maintainable being not sponsored by any union one more issue be raised touching that aspect and the learned advocate appearing for the I Party since submitted in view of the specific contention of the II Party regarding maintainability on the ground of being not sponsored by any union one more issue may be raised which may need no further evidence one more issue was raised as under :

“Whether the reference is maintainable being not sponsored by any Union?”

4. With the above pleadings and evidence the arguments addressed by the learned advocates appearing for both sides were heard, on these two Preliminary Issues.

5. The learned advocate appearing for the II Party while referring to the decision of Division Bench of the High Court of Karnataka in the case of M/s. Forbes Gokak Limited vs. J. H. Jadhav reported in ILR 2004 KAR Page 2841 urged that imposition of stoppage of punishment of five increments with cumulative effect on the I party admittedly being not espoused by any Union or group of workmen and it is raised by individual workman it is not governed under Industrial Disputes Act and is liable to be rejected in limine. Inter alia, the learned advocate appearing for the I Party while citing the decision of Hon'ble Supreme Court of India in the case of National Council for Building and Cement Materials and State of Haryana and other reported in 1996 II LLJ SC 125 and two unreported decisions of High Court of Karnataka decided in W A No. 2907/2005 dated 25.07.2005 and W P No. 13682/2005 dated 06.06.2005 urged that though the proposition that dispute raised individually by workman in relation to the reduction of five stages cannot be industrial dispute urged that on that count only the reference cannot be rejected and this tribunal has to give finding on all the issues and as complainants have not been examined in the Domestic Enquiry depriving the I Party to cross-examine them the Domestic Enquiry be held as not fair and proper.

6. In respect of the punishment, imposed against the I Party of stoppage of five increments for a period of five years with cumulative effect when it is fairly admitted by his learned counsel it cannot become an industrial dispute his argument relying on the decisions referred above the tribunal has to give finding on all the issues is not acceptable, for the simple reason that when it is admitted dispute raised individually in relation to reduction of five stages cannot be industrial dispute as defined under the Section 2(k) of the ID Act, 1947 this tribunal loses jurisdiction to give its finding on other issues on merits and even the issue touching the fairness or otherwise of Domestic Enquiry. On facts in the case of National Council for Cement and Building Materials vs. State of Haryana and others reported in 1996 II LLJ SC Page 125 the Hon'ble Supreme Court held discretion exercised by the Industrial Tribunal agreeing to decide Preliminary Issue but subsequently deciding to hear Preliminary Issue along with other issues on merits by Industrial Tribunal cannot be interfered by High Court in Writ Proceedings as such Discretion exercised by High Court declining to interfere with the discretion exercised by Industrial Tribunal does not call for interference and it is not laid down in this decision of the Apex Court that necessarily finding on all issues required to be decided in a reference are to be answered even where it is prima facie evident that the dispute covered in the reference do not amount to industrial dispute. Therefore on facts in the instant case when it is fairly admitted that dispute raised individually by workman in relation to reduction

of five stages cannot constitute an industrial dispute this tribunal loses jurisdiction to decide the other issues touching the merits and even the fairness or otherwise of the Domestic Enquiry. In the result, the second Preliminary Issue is answered in the Affirmative i.e. the reference is not maintainable being not sponsored by any Union or group of workmen and that the first Preliminary issue and other issues touching the merits do not survive for consideration and the reference is liable to be rejected as the schedule of reference do not constitute an industrial dispute as defined under Section 2 (k) of the ID Act, 1947. In the result, I pass the following :—

ORDER

The Second Preliminary Issue is answered in the Affirmative i.e., the Reference is not Maintainable being not sponsored by any Union or group of workmen and that the other Preliminary Issue as well as other issues touching the merits do not survive for consideration and the Reference is Rejected. This order shall be treated as Award and sent for notification to the Ministry.

(Dictated to U.D.C. transcribed by him, corrected and signed by me on 26th June 2013.

S. N. NAVALGUND, Presiding Officer.

ANNEXURE - I

Witnesses examined on behalf of Management :

MW 1 - Sh. V R Iyengar

Witnesses examined on behalf of Workman :

Nil

Documents exhibited on behalf of the Management :

- Ex.M-1 : Office copy of charge sheet dated 04.03.2004 alongwith list of documents and duly acknowledged by the first party for having received by him.
- Ex.M-2 : Office copy of orders/proceedings dated 06.04.2004 appointing the Enquiry Officer.
- Ex.M-3 : Office copy of orders proceedings dated 06.04.2004 appointing the Presenting Officer.
- ExM-4 : Office copy of Notice of Enquiry dated 19.04.2004 issued to the first party by the Enquiry Officer.
- ExM-5 : Enquiry Proceedings dated 27.04.2004, 06.05.2004 and 11.06.2004, alongwith Management Exhibits MEX-1 to MEX 13 and Defence Exhibit DEX 1.

- Ex M-6 : Written Brief dated 17.06.2004, submitted by the Presenting Officer.
- Ex M-7 : Written Brief dated 26.06.2004 submitted by the Defence Representative.
- Ex M-8 : Finding dated 06.07.2004 of the Enquiry Officer.
- Ex M-9 : Letter dated 07.07.2004 of the Disciplinary Authority addressed to the first party enclosing findings of Enquiry Officer, for his submissions if any, acknowledged by the first party for having received the copy.
- Ex M-10 : Submission of the Defence Representative on the findings of the Enquiry Officer dated 16.07.2004.
- Ex M-11 : Notice of personal hearing dated 05.08.2004, duly acknowledged by the first party.
- Ex M-12 : Office copy of proceedings dated 23.08.2004 enclosing orders of the Disciplinary Authority dated 23.08.2004 imposing the punishment of compulsory retirement.
- Ex M-13 : Appeal dated 22.09.2004 preferred by the first party against the punishment imposed by the Disciplinary Authority.
- Ex M-14 : Proceedings dated 17.03.2005 enclosing the detailed orders dated 09.03.2005 of the Appellate Authority, modifying the punishment.
- Ex M-15 : Letter dated 29.03.2005 of the Second Party recording the fact of reinstatement of first party into service w.e.f. 23.03.2005 (boh).

Documents exhibited on behalf of the I party.

नई दिल्ली, 22 अगस्त, 2013

का.आ.1987 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 103/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-3-2013 को प्राप्त हुआ था।

[सं. एल-39025/1/2010-आई आर (बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 22nd August, 2013

S.O. 1987. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 103/

2011) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 26-03-2013.

[No. L-39025/1/2010-IR (B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANPUR.

Industrial Dispute No. 103/2011

Kaushal Kumar Singh,
Son of Sri Ashok Kumar Singh, Resident of
38/24, Prayag Narain Shivala', Behind Gupta Own
Wala,
Kanpur.

AND

The Zonal Manager,
Central Bank of India,
23, Vidhan Sabha Marg,
Lucknow and others.

AWARD

1. Brief facts are—

2. A claim petition has been filed by the claimant under sub-section (1) of Section 2-A of the Industrial disputes Act, 1947, claiming that his removal from service by the opposite party from 29.06.93 be declared as illegal and unjustified and he should be reinstated in the service of the bank with consequential benefits.

3. The claim of the workman has been challenged by filing a written reply as well as by moving a separate application paper no. 9/1 along with affidavit alleging that the claim of the workman is not maintainable legally or factually.

4. It is contended by the opposite party that the claimant has raised the dispute several times before the ALC(C) but his prayer was not accepted. Vide paper No. 8/6 dated 19.01.95, his case was not found suitable by Government of India for sending a reference, and thereafter the workman has also filed a writ petition raising the same aversions. This writ petition was decided against the workman vide order dated 25.01.05. The copy of the said order is paper no. 9/27. The workman again raised the dispute before the Conciliation Officer, the workman remained absent on several dates before the Conciliation Officer thereby the Conciliation Officer closed

the dispute vide order dated 17.10.11, vide paper No.9/23.

5. Thereafter the claimant filed this claim statement on 14.12.11.

6. It is contended by the AR of the opposite party that under sub-section (3) of Section 2-A, of the Act the present dispute is not maintainable as the same has not been filed within 3 years from the date of his removal.

7. I would like to reproduce the provisions of sub-section (3) of Section 2-A of the Act as amended.

8. The Application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before expiry of three year from the date of discharge, dismissal, and retrenchment or otherwise, termination of service as specified in sub-section (1).

9. The provisions are very clear. Termination is dated 29-06-1993. Therefore, filing of claim statement challenging the termination of the services of the Applicant cannot be maintainable.

10. Ruling filed by the workman 1999 (82) FLR 137 Supreme Court in between Ajayab Singh and Sirhand Cooperative Marketing-cum-Processing Service Society Limited is not applicable considering the facts of the present case.

11. Here in the present case the statute has laid down limitation which is mandatory.

12. Therefore, considering all the facts that the Government did not find the case suitable for the reference. Secondly, he raised the dispute before the Hon'ble High Court and considering the facts the Hon'ble High Court decided the case vide order dated 25-01-05, thirdly he did not take interest before the conciliation officer due to his absence and lastly under sub-section (3) of Section 2-A, of the Act, the present claim of the Applicant is not maintainable.

13. Therefore, the claimant is not entitled to any relief as claimed by him in his claim petition.

14. Let two Photocopy of this order be sent to the Government of India, for its publication.

Dated : 13-03-2013

RAM PARKASH, Presiding Officer

नई दिल्ली, 23 अगस्त, 2013

का.आ. 1988.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स

ई सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 18/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-8-2013 को प्राप्त हुआ था।

[सं. एल-22012/104/2005-आई आर (सीएम-II)]
बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 23rd August, 2013

S.O.1988.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 18/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited, and their workmen, received by the Central Government on 23-8-2013.

[No. L-22012/104/2005-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM-LABOUR COURT, ASANSOL

Present : Sri Jayanta Kumar Sen, Presiding Officer

REFERENCE No. 18 of 2006

Parties : The management of Chora Haripur Group of Mines, M/s. ECL, Burdwan(WB)

Vs.

The Gen. Secy., KMC, Asansol(W.B.)

REPRESENTATIVES:

For the management : Sri P.K. Das, Ld. Advocate

For the union (Workman) : Sri Rakesh Kumar, Ld.
Representative

INDUSTRY: COAL STATE: West Bengal

Dated- 19-03-13

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/104/2005-I.R. (CM-II) dated 03-07-2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of M/s. Eastern Coalfields Limited in discharging Sh.Rajendra

Chamar, Ex-U.G. Loader from servcie w.e.f. 20-07-2004 is legal and justified? If not, to what relief the workman is entitled to?"

Having received the Order of Letter No. L-22012/104/2005-I.R. (CM-II) dated 03-07-2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a referenc case No. 18 of 2006 was registered on 09-08-06 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that the case has already awarded "No Dispute" on the basis of the prayer of the workman in Ref. Case No. 15/2006. Since Ref. 15/2006 and Ref. 18/2006 are same, this case is closed and accordingly an order of "No Dispute Award" is hereby passed.

ORDER

Let an "Award" be and the same is passed as "No Dispute" existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 26 अगस्त, 2013

का.आ.1989.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ई सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 02/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-8-2013 को प्राप्त हुआ था।

[सं. एल-22012/183/2011-आई आर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 26th August, 2013

S.O.1989.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Poniat Workshop M/s. ECL, and their workmen, received by the Central Government on 23-8-2013.

[No. L-22012/183/2011-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

Present : Sri Jayanta Kumar Sen, Presiding Officer

REFERENCE No. 02 of 2012

Parties : The management of Poniat Workshop, M/s. ECL, Burdwan(WB)

Vs.

The Secy., CMSI (CITU), Jamuriahat, Burdwan (W.B.)

REPRESENTATIVES:

For the management : None

For the union (Workman) : Sri G. D. Mandal, Ld. Representative

INDUSTRY: COAL STATE: West Bengal

Dated- 14-03-13

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its Order No. L-22012/183/2011-I.R. (CM-II) dated 08-02-2012 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Poniat Workshop of M/s. ECL in not correcting the date of appointment of Trainee as Date of Appointment for employment in respect of S/Shri Netai Gopal Guin, Shoke Kr. Mukherjee, Gangadhar Mondal, Ananta Kr. Banerjee, Subhash Banerjee and Joudeb Karmakar is fair and justified? To what relief the workman concerned are entitled to?"

Having received the Order of Letter No. L-22012/183/2011-I.R. (CM-II) dated 08-02-2012 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 02 of 2012 was registered on 02-03-2012 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the case record, it has been found that Sri G.D. Mandal, President of the Union appears and

files a petition praying therein that the workmen are not interested to proceed with the case any further. Since the workmen are not interested to proceed with the case, the case is closed and accordingly an order of “No Dispute Award” is hereby passed.

ORDER

Let an “Award” be and the same is passed as “No Dispute” existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 27 अगस्त, 2013

का.आ.1990.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 32/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-8-2013 को प्राप्त हुआ था।

[सं. एल-12012/881/92-आई आर (बी-II)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 27th August, 2013

S.O.1990.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/NGP/ 32/1999) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management Bank of India, and their workman, which was received by the Central Government on 01-8-2013.

[No.L-12012/881/92-IR (B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE SHRI J.P.CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/32/1999 date: 20-06-2013

- Party No. 1** : The Regional Manager,
Bank of India, Mul Road,
P.B. No. 15, Chandrapur-442401
- Party No. 2** : The Regional Secretary,
Bank of India, Workers' Organization,
Gond Raja House Samadhi Ward,
Chandrapur

AWARD

(Dated: 25th June, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of India and their 5 workmen, Rajjak Kayam Qureshi, Shri Dharamdas Baburde, Shri Purushottam, Shri Dinkar Indurkar, Barsagade and Shri Narayan Punjaram Parehake to the Central Government Industrial Tribunal —cum Labour Court, Jabalpur, for adjudication, as per letter No. L-12012/881/88-D-2(A) dated 10-08-1989, with the following schedule:—

“Whether Sh. Rajjak Kayam Qureshi, Sh. Dharamdas Baburde, Sh. Purushottam, Sh. Dinkar Indurkar, Barsagade and Sh. Narayan Punjaram Parcheke, Budlee Sepoys of various branches of Bank of India, are entitled to get the employment by the Regional Manager, Bank of India, Chandaur? If not, to what relief the workmen concerned are entitled?”

Subsequently, the reference was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, “Bank of India Workers’ Organization”, (“the union” in short) filed the statement of claim on behalf of the five workmen, Rajjak Kayam Qureshi, Shri Dharamdas Baburde, Shri Purushottam, Shri Dinkar Indurkar, Barsagade and Shri Narayan punjaram Parehake, (“the workmen” in short), and the management of Bank of India, (“Party No.1” in short) filed their written statement.

The case of the five workmen as presented by the union in the statement of claim is that the party no.1 is a nationalized banking industry and it (union) is a trade union duly registered under the Trade unions Act and the service conditions of the employees of party no.1 are governed by the provisions of Sastry award, Desai award and bipartite settlements signed under the Act and as modified from time to time and being aggrieved by the action of party no.1, an industrial dispute was raised by it, on behalf of the five workmen before the Assistant Labour Commissioner (Central), Chandrapur for their regularisation and during the conciliation proceedings, the party no.1 agreed to consider the candidature of the workmen for employment in the Bank and necessary minutes duly signed by the parties were recorded by the competent authority on 21.06.1989, but party no.1 breached the understanding, hence, the dispute was referred to the Tribunal for adjudication. The further case of the union is that the workman, Abdul Rajjak Qureshi

came to be appointed as a sub-staff at Warora branch of party no.1, w.e.f. 05-08-1986 and his services were utilized till June, 1989 and the salary paid to him was ranging from Rs. 20/- to Rs. 30 per day, but surprisingly, the said salary was paid to him through vouchers purported to have been a reimbursement to the Branch Manager and he had put in more than 240 days in 12 months period preceding the date of termination and therefore, provisions of section 25-F of the Act are attracted and in spite of the understanding reached before the ALC on 21.06.1989, he was not absorbed in the employment of the bank on regular basis and workman Shri Dharamdas Bamburde came to be appointed on 06.04.1987 at Bhadrawati branch of party no.1 as a sub-staff and the wages paid to him were Rs. 40/- per day and he had put in more than 1500 days in the services of the bank, but his services, however have not been regularized and the workman Shri Narayan Punjaram Purchase was appointed at Warora branch w.e.f. 13-04-1987 as a sub-staff and the payment of salary was made to him through vouchers and the said workman was one of the employees, whose name was included in the understanding reached before the ALC, Chandra pur on 21-06-1989, but in breach of the said understanding, the employee has not been regularized or absorbed in the employment of the Bank. It is also pleaded by the union that the workman, Shri Diwakar Namdeo Barsagade came to be appointed at Bangaram Talhodi branch of the party no.1 as a sub-staff w.e.f. 23-03-1988 and he had put in more than 1800 days of service in the bank and for performing the duties of sub-staff, he had been paid wages @ Rs. 45.35 per day and the payment was being credited in the account of the workman maintained in the branch and the services of the said workman have neither been regularized nor he has been appointed in the services of the bank and the workman, Shri Indurkar came to be appointed as a sub-staff at NERI branch in the year 1984 and he had put in more than 240 days of service in the bank and his name was included in the memorandum of understanding dated 21-06-1989 reached before the ALC, Chandrapur, but he has not been regularized much less employed by the bank and as per the Shastry award, the employees in the banking industry have been classified into three categories, namely, permanent employee, probationer and temporary employee and no other category of employee has either been suggested or permitted by Sastry award and from the manner, in which the workmen were appointed and the nature of the duties performed by them, it can be found that the workmen were appointed against permanent vacancies and they cannot be treated as temporary employee, because temporary employee cannot be appointed for more than 3 months and para 20.8 of the bipartite settlement gives right of inclusion of temporary period put in by any such employee as part

of the probationary period, in case the said employee is subsequently selected for permanent absorption in the services of the bank and the action of the party no.1 in treating the five workmen as badli employees is against the provisions of Sastry award and by virtue of having put in more than one year of continuous service, in terms of the Act, the five workmen automatically achieved the status of permanent employee and they are entitled for the status of permanent employee as per Sastry Award and for regular employment in the services of the Bank and as the five workmen had put in more than 240 days of work, it was necessary for the party no.1 to follow the procedure prescribed under section 25 of the Act, before termination of their services and party no.1 neither paid any retrenchment compensation nor conducted any departmental enquiry against the five workmen, before their termination and no notice was also served on the workmen, before their termination and as such, the five workmen are entitled for their absorption as permanent sub-staff in the services of the bank with immediate effect and all consequential benefits.

3. The party no.1 in the written statement has pleaded inter-alia that the understanding dated 21-06-1989 was only a proposal which ultimately did not materialize and the workman, Shri A.R. Qureshi was engaged purely on casual basis, during the leave vacancy of the permanent sepoy and he worked for 60 days, one day, 118 days and 62 days in the leave vacancy in the years 1986, 1987, 1988 and 1989 respectively and as the engagement of the said workman was on casual basis, his pay was drawn out of the funds of the branch manager, who was to reimburse the expenses and Shri Qureshi was required to do the duties of the sub-staff, in whose absence he had been engaged and Shri Qureshi had not put in more than 240 days of work in 12 months preceding the termination and as such, the provisions of section 25-F of the Act are not applicable to his case and his appointment on each occasion was for a fixed period in casual vacancy and as such, the non-renewal of the said contract is clearly beyond the purview of the definition of retrenchment as per section 2 (oo) of the Act and therefore, the question of compliance of provisions of section 25-F doesn't arise. It is further pleaded by the party no.1 that the services of the workman, Shri Dharamdas Bamburde were utilized in the leave/suspension vacancy of one Shri V.M. Katkar and his services were utilized according to his ability at Bhadrawati Branch and he worked for 94 days, 42 days and 39 days in 1987, 1988 and 1989 respectively and the claim made by him of having putting more than 1500 days of services is quite wrong and is denied and the workman being a casual workman is not entitled to permanency/regularisation as claimed by him. The further case of party no.1 is workman, Shri Narayan Punjaram Purchase was engaged at Warora branch on casual basis

in the leave vacancy of permanent sepoy and he worked for 37 days, 65 days and 25 days in 7, 1988 and 1989 respectively and the workman is not entitled for regularisation/absorption in permanent employment of the bank and the workman, Shri D.N. Barsagade was appointed Bhangaram Talodhi branch on casual basis and he had not put in 1800 days of service as alleged and he worked on casual basis/leave vacancies for 64 days and 4 days in 1988 and 1989 respectively and he is not entitled for regularisation or absorption in the permanent service of the bank and the workman Shri Indurkar was engaged on casual basis in the leave vacancy permanent sepoy/sweeper and he did not put in more than 240 days of service and he worked on casual basis for 34 days, 19 days, Nil day, Nil day and four days in the years 1985, 1986, 1987, 1988 and 1989 respectively. The further case of the party no.1 is that the engagement of five all the workmen was on casual basis for a specific period in various leave vacancies and their such engagement automatically came to an end, after the expiry of the stipulated period and as the disengagement of the five workmen doesn't amount to termination of their service: provisions of section 25-F of the Act are not applicable and the reference is not maintainable and the five workmen are not entitled to any relief.

4. In support of the claim, the union has examined six witnesses including two workmen, besides placing reliance on the documentary evidence. The witnesses examined by the union are (1). Shri Rajjak Qureshi (workman), (2). Shri P.G.Indurkar(workman), (3). Shri Vinayak Joshi Shri Shirish A. Damle, (5). Shri Arvind M. Tamhaney and (6). Shri Rajendra M. Dahikar.

No oral evidence has been adduced by the Party No.1.

5. At the outset, I think it necessary to mention that it is settled beyond doubt by principles enunciated by the Hon'ble Apex Court in a string of decisions that the Tribunal can not travel outside the terms of reference and the jurisdiction of the Tribunal in industrial dispute is limited to the points specifically referred for its adjudication and to matters incidental there to.

6. During the course of argument, it was submitted by the union representative that the workmen were appointed by the respective Branch Managers with the consent and approval the Zonal Manager and they were sponsored by the Employment Exchange and they performed the duties of full time peons, although they were paid on daily wage basis and they worked continuously between 1984 to 1989 and despite the existence of permanent vacancies, Party No.1 did not regularize the workmen and there was violation of the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act and the Party No.1 adopted unfair labour practice. It was further submitted by the union

representative that Party No.1 has virtually admitted the allegations made in the statement of claim, in their written statement and the oral evidence adduced by the workmen, which has not been challenged seriously in the cross-examination, the documentary evidence produced by the workmen and absence of any rebuttal evidence from the side of Party No.1 have fully proved the claim of the workmen and as such, the workmen are entitled for reinstatement in service with continuity, full back wages and all consequential benefits. It was also submitted by the union representative that during the conciliation proceedings before the ALC, Chandrapur, Minutes of understanding were signed by the union and party no.1 and party no.1 assured to absorb the workmen, Shri Qureshi and Shri Bamburde and also gave assurance for absorption of the three other workmen, but party no.1 did not implead the said settlement, which is quite illegal and the workmen are entitled for their absorption against permanent vacancies.

It was further submitted by the union representative that though the Tribunal passed orders directing the Party No.1 to produce the relevant documents, the Party No.1 failed to produce the documents and as such, adverse inference is to be drawn against Party No.1 and the reference is to be answered in favour of the workman.

7. Per contra, it was submitted by the representative for the Party No.1 that the workmen were engaged on purely casual basis temporally for different spells, in the respective branches and their engagement was as and when required basis, due to taking of leave by the permanent Sub-staff or temporary increase of work load in the branch and none of the workmen completed 240 days of work in the preceding 12 calendar months of the alleged date of termination and the workmen have admitted such facts and the evidence on affidavits of the witnesses examined by the workmen are general affidavits and no reliance can be placed on the same, as no document has been produced by the workmen to demonstrate that they had worked for 240 days in the preceding 12 months of the alleged date of termination and the workmen have failed to discharge the burden of proving that in fact they had worked for 240 days in the preceding 12 months of the date of termination, so the provisions of the Act are not applicable and adverse inference is not to be drawn for non production of the documents and Party No.1 did not adopt any unfair labour practice and the workmen are not entitled to any relief.

In support of the submissions, reliance was placed by Party No.1 on the decisions reported in AIR 2004 SC - 4791 (M.P. Electricity Board Vs Hariram), (2006) 1 SCC - 106 (R.M. Yellatti Vs. Asstt. Executive Engineer), (2006) 9 SCC - 697 (Krishna Bhagya Jal Nigam Ltd. Vs. Mohd. Raffi), (2006) 9 SCC - 132 (Surendra Nagar District Paanchayat Vs. Gangaben), Writ Petition No. 1072/2002

of Hon'ble Bombay High Court, Nagpur Bench, (2006) 6 SCC - 221 (Reserve Bank of India Vs Gopinath Sharma) and AIR 2006 S.C. - 839 (Regional Manager, SBI Vs Rakesh Kumar).

8. First of all, I will take of the submission made by the union representative regarding drawing of adverse inference against the party no.1, for non production of the documents. Admittedly, order was passed by the Tribunal directing the party no.1 to produce documents as demanded by the union. However, the party no.1 failed to produce the documents. The terms of reference in this case is as to whether the five workmen are entitled to get the employment. On perusal of the materials on record including the pleadings of the parties, it is found that the claim of the workman about their engagement on different branches on casual basis on daily wages has been admitted by the party no.1 in the written statement. Except the workman, Shri Abdul Rajjak Qureshi, the other four workmen have not claimed that they had infact worked for 240 days in the preceding 12 calendar months of the date of termination. Moreover, the union during the course of hearing of the case has produced almost all the documents, which it had demanded for production by party no.1. In view of such admitted facts and applying the principles enunciated by the Hon'ble Apex Court in the decisions reported in AIR 2004 S.C-4791 (supra) and (2006) 1 SCC-106 (supra) in regard to drawing of adverse inference for non production of documents by a party, to the case in hand, it is found that there is no need to draw adverse inference against the party no.1 for the non production of the documents.

9. Though the reference has been made by the Central Government for adjudication of the dispute as to whether the workmen are entitled to get employment, the union, in the guise of raising the dispute on behalf the workmen has tried to challenge the policy adopted by the party no.1 of engaging persons on temporary basis, inspite of having number of permanent vacancies in the cadre of sub-staff at different branches of the Bank. In view of the settled principles that the Tribunal cannot travel beyond the terms of reference as already mentioned above and in view of the fact that such specific terms of reference has not been made by the Government, such claim cannot be adjudicated.

Moreover, from the materials on record including the pleadings of the parties, it is found that the engagement of the workmen in this case by party no.1 was not against any permanent vacancy in the branch, but their engagement was on temporary basis as daily wages, as and when required basis, against leave vacancy of the permanent sub-staff or due to temporary increase of workload in the branch.

10. At this juncture, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in

the decision reported in (2006) 6 SCC-221 (supra). The Hon'ble Apex Court has held that:-

“Labour Law-Daily wager-Disengagement of-Validity-Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held had no right to post.”

10. At this juncture, I also think it necessary to mention about the principles enunciated by the Hon'ble Apex Court in a catena of decisions including the decision reported in AIR 2006 SC-1806 (Secretary, State of Karnatak Vs. Umadevi & others)(Constitutional Bench).

It is settled beyond doubt by the Hon'ble Apex Court that:-

“Rules. of recruitment cannot be relaxed and the court/Tribunal cannot direct regularisation of temporary appointees de hors of rules-State owned/operated corporations-Appointment-Modes of appointment - Held regularization cannot be a mode of appointment- Public Sector- Appointment- Mode of appointment-Held, regularization cannot be a mode of appointment- Labour Law- Appointment- Mode of appointment-Held, regularization cannot be a mode of appointment-Regularization-Held, not a permissible mode of appointment.”

It is also settled by the Hon'ble Apex Court that:

“The term ‘temporary employee’ is a general category which has under it several sub-categories e.g. casual employee, daily-rated employee, ad hoc employee, etc. A daily-rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post, or to be continued in service, to get absorption, far less of being regularized and getting regular pay. No doubt, there can be occasions when the state or its instrumentalities employee persons on temporary or daily wage basis in a contingency as additional hands without following the required procedure, but this does not confer any right on such persons to continue in service or get regular pay. Unless the appointments are made by following the rules, such appointees do not have any right to claim permanent absorption in the establishment. The Court cannot direct continuation in service of a non-regular appointee. Even if an ad hoc or casual appointment is made in some contingency the same should not be continued for long, as was done in the present case. A casual or temporary employment is not an appointment to a post in the real sense of the term. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is one that would enable the jettisoning of the procedure establish by law for public employment.”

It is also settled by the Hon'ble Apex Court that:-

“Employment on daily wage - Confers no right of permanent employment- Daily wagger appointed on less than minimum wages - Not forced labour - Continued on post for long period - Daily wagers from a class by themselves - They cannot claim parity vis-a-vis those regularly recruited on basis of relevant rules and cannot be made permanent in employment.

Employees were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who were working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regular recruited candidate and made permanent in employment even assuming that the principle could be invoked for claiming the equal wages for equal work. There is no fundamental right in those who have been employed in daily wages or temporally or on contractual basis, to claim that they have a right to be absorbed in service. They cannot be said to be holders of a post, since, a regular appointment to be made only by making appointments consistent with the requirements of articles 14 and 16 of the Constitution. The right to be treated equal with the other employees employed on daily wages, cannot be extended to a claim for equally treatment with those who were regularly employed. That would be treating unequal as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of relevant recruitment rules.”

Keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

11. So far the oral evidence adduced by the union in regard to the appointment and working days of the five workmen is concerned, it is found that the workman, Shri Purosottam Giridihar Indarkar in his examination-in-chief, which is on affidavit has stated that he had completed 24 days of work before his termination. However, such statement cannot be taken into consideration, in absence of such pleadings in the statement of claim. In the statement of claim it has been only mentioned that Shri Indurkar was appointed as sub-staff at NERI branch in 1984 and he put in 240 days service in the bank and though his name was included in the memorandum of understanding dated 21-06-1989, he was not regularized. Nothing has been mentioned as to the date on which the said workman was appointed or the date on which, he was terminated from services. Moreover, in his cross-examination, Shri Indurkar has admitted that he has not filed any document to show that his selection was made by the bank for any post and

that he worked for 953 days in total at NERI branch and that he had worked for more than 240 days before his termination and that he had completed 249 days of work from 17-6-1988 to 16-06-1989.

Workman, Shri Qureshi in his examination-in-chief, which is on affidavit, has stated that all the workmen including himself had completed 240 days of work before their termination. However, it is to be mentioned here that in absence of any pleadings in respect of the other four workmen about their working for 240 days before their termination and about the date of their respective termination in the statement of claim, the evidence of Shri Qureshi in regard to the other four workmen in that respect cannot be looked into and cannot be considered. In his cross-examination, Shri Qureshi has admitted that in his affidavit dated 16-11-1995, he had claimed that he had worked for 350 days in total, whereas in his affidavit dated 16-10-2012, he has claimed to have worked for 797 days in total till 16-06-1989 and he was engaged by the Branch Manager on daily wages as and when required in the Branch and no appointment order was issued by the bank and he has not filed any document to show that he had worked for 240 days in the preceding 12 months of the date of his termination. Though Shri Qureshi has claimed that he worked for 240 days in the 12 calendar months of his date of termination, there is no legal evidence on record in that regard. Shri Qureshi has failed to prove the said fact by producing any document in that respect.

It is to be mentioned here that the workmen, Shri Dharamdas Bamburde, Shri Narayan punjaram Parchake and Shri Diwakar Namdeo Barsagade did not appear as witnesses in this case.

So far the evidence of Shri Vinayak Joshi, Shri Shirish Anandrao Damle, Shri Arvind M Tamhaney and Shri Rajendra M. Dahikar is concerned, the same is very general in nature and most part of their evidence is regarding the availability of vacancies in the Sub-Staff Cadre in different branches of the Bank of Party No.1 and in respect of the policy adopted by Party No.1 regarding engagement of badlee sepoy/peon instead of filling up the posts by making regular recruitment, which is not the subject matter of adjudication in this reference, as already mentioned above.

Shri Joshi in his examination-in-chief without mentioning the name of the workman has generally mentioned that every workman covered by the reference has completed 240 days in consecutive 12 months period. Shri Joshi has not stated that each of the workmen in fact had worked for 240 days in the preceding 12 months of the date of termination. Nothing has also been mentioned by Shri Joshi about the period during which every workman involved in the reference completed 240 days in a

consecutive 12 months period. In his cross-examination, Shri Joshi has stated that the method of recruitment of sub-staff is to call for the names from the Employment Exchange and after interview, to select suitable candidates for permanent temporary, full time and part time employees and in small branches having only one sub-staff temporary arrangements have to be made by the Branch Manager with consultation with administrative office, which the said sub-staff proceeds on leave or sick and as per the document Ext. W-10, Bank is allowing to appoint sub-staff/sepoys on casual basis in small branches.

Shri Damle, in his cross-examination has stated that the Bank has authorized the manager to engage casual employees.

The evidence of Shri Arvind M. Tamhaney in his examination-in-chief itself contradictory to the stand taken by the union and the workman in the statement of claim. According to the union the workmen worked continuously from 1984 to 1989, without any break, where as, in paragraph 24 of his affidavit, Shri Tamhaney has mentioned that, In the instant case, the concerned employee was given illegal break in service by management on many occasions without any reason and with malafide intention.”

Moreover, in his cross-examination, Shri Tamhaney has admitted that his affidavit is , general affidavit and the same does not have any specific reference to the concerned workmen and the workmen were working with the Bank intermittently for several years and he has not mentioned as to the period of engagement of the workmen or the number of days they worked for the Bank.

12. On perusal of the materials on record and taking into consideration the submissions made during the course of argument by both the parties, it is found that the workmen were engaged as Badlee Sepoys in different branches on daily wages basis and they worked in the respective branches intermittently in the leave vacancy of permanent Sub-staff or when there was temporary increase of work in the branch. The appointment of the workmen was not against any permanent post. It is to be mentioned here that the submission made by the union representative that the workmen were appointed by the Branch Manager with the approval of the Zonal Manager and their names were sponsored by the Employment Exchange cannot be, entertained, in absence of such pleadings in the statement of claim and evidence on record in that regard. It is clear from the record that the appointment of the workmen was not in accordance of the Rules of recruitment of Party No.1 It is also clear from the own pleadings of the workmen, except Shri Qureshi that they did not work for 240 days in the preceding 12 calendar months of the alleged date of termination. Shri Qureshi has also failed to prove that in fact he had worked for 240 days in the preceding 12 months

of the date of his termination, already mentioned above. To avail the benefits of Section 25-F of the Act, it is necessary to show that infact the workmen had worked for 240 days in the preceding 12 months of the date of termination. As admittedly, the workmen did not work for 240 days in the preceding 12 months of the date of termination, there was no need for Party No.1 to comply the provisions of Section 25-F of the Act.

13. On perusal of the record, it is found that there was no understanding reached between the parties before the Assistant Labour Commissioner on 21-06-1989, as claimed by the union in the statement of claim. However, there is a copy of the minutes of the conciliation meeting held on 24-01-1990 in respect of the strike notice served by the union against the party no.1 on 21-06-1989. On perusal of the said document, it is found that the party no.1 had agreed to consider the appointment of Shri Qureshi and Shri Bamburde in the vacancies that may arise in future after fulfilling all the requirements as per rules and that the union had withdrawn the cases in respect of the other workmen. There is no evidence on record to show that the workmen, Shri Qureshi and Shri Bamburde fulfilled all the requirements as per rules and inspite of the same, the party no.1 did not appoint them. So, the aforesaid two workmen are not entitled for appointment on the basis of the minutes of the conciliation meeting held on 24-01-1990.

14. At this juncture, I think it proper to mention about the principles envisaged by the Hon'ble Apex Court in the decisions reported in (2006) 6 SCC 221 (Supra) and AIR 2006 SC - 839 (Supra).

In the decisions reported in (2006) 6 SCC 221 (Supra) the Hon'ble Apex Court have held that:

“Labour law - Daily wager - Disengagement of - Validity - Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post - Hence, his disengagement on acquiring a qualification exceeding the maximum prescribed, held, could not be treated as arbitrary or amounting to wrongful dismissal within the meaning of item 3 of schedule II to Industrial Disputes Act, 1947 - High Court erred in holding otherwise - Industrial Disputes Act, 1947, schedule II item 3 - Wrongful dismissal - What is not - Post - Right to - Daily wager, held, devoid of such a right.

Labour law - Industrial Disputes Act, 1947 - Ss. 25G and 25F-Applicability of Section 25G - Where High Court had not found the workman to have been retrenched within the meaning of S. 25F, held, it erred in holding S. 25G to be applicable.

In the decision reported in AIR 2006 SC - 839 (Supra) the Hon'ble Apex Court have held that:

“Retrenchment - Respondent employed as messenger on daily wage basis by bank - No appointment letter issued to him - Termination of his service - Reference was not made regarding validity of retrenchment under S. 25G - But for not considering respondent for reemployment under S. 25H - Order of reference did not refer to S. 25G but only to S. 25H - Thus finding by Tribunal that order terminating services of respondent was in violation of S. 25G - illegal-Further respondent in his application under S. 33-C(2) never raised plea that his services were illegally terminated - In circumstances High Court's view that termination of services of respondent was invalid under S. 25H - Not sustainable as S. 25H proceeds on assumption that retrenchment has been validly made. Industrial Disputes Act (14 of 1947), schedule 3 item 1 - Shastry Award, para 497 - Benefit under - Respondent employed by bank on ad hoc basis - no appointment order was issued - Dispensation of his services - Not in violation of para 497.

Para 497 deals with the right of apprentices and has no application to temporary employees like the respondent. Assuming that there was a violation of the Shastry Award by the appellant bank in both cases either in not issuing appointment letters or not maintaining a seniority list, service book in respect of temporary employees etc., this would not mean that therefore the respondent had been properly appointed and their services wrongly terminated. Admitted no procedure whether in law or under any award or settlement was followed either of the respondents in both appeals. No conditions of services were agreed to and no letter of appointment was given. The nature of the respondents employment was entirely ad hoc. They had been appointed without considering any rule. It would be ironical if the person who have benefited by the flouting of the rules of appointment can rely upon those rules when their services are dispensed with.”

Judging the case in hand with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above, it is found that there is no merit in the case of the workmen and they are not entitled to any relief. Hence, it is ordered:-

ORDER

The reference is answered in negative and against the workmen. The five workmen are not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 27 अगस्त 2013

का.आ.1991.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया मुम्बई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 28/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-08-2013 को प्राप्त हुआ था।

[सं. एल-12012/91/94-आई आर (बी-II)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 27th August, 2013

S.O.1991.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the Bank of India and their workman, which was received by the Central Government on 01-08-2013.

[No. L-12012/91/94-IR (B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/28/1999 Date: 24-06-2013.

Party No.1

The Regional Manager,
Bank of India, Regional Office,
13, Mul Road, Chandrapur-442401.

Party No.2 Shri S.R. Tripurwar, Regional Secretary,
Bank of India workers organization,
"Om Niwas" Laxmi nagar, Wadgaon Rd.,
Chandrapur-44240 1.

AWARD

(Dated: 24th June, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of Bank Of India and their workman, Shri Vijaya Vishwanath Kapkar, for adjudication, as per letter No.L-12012/91/94-IR (B-II) dated 26-09-1994, with the following schedule:—

"Whether the demand of the Bank of India workers' Organisation, Chandrapur on the management of Bank of India, Chandrapur for regularisation of the services of Shri Vijaya Vishwanath Kapkar as Sepoy is justified? If so, what relief is the said workman entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective, statement of claim and written statement and accordingly, the workman, Shri Vijaya Vishwanath Kapkar, ('the workman' in short), filed the statement of claim through the union, "Bank of India Workers' Organisation", ('the union' in short) and the management of Bank of India, ("Party No. 1" in short) filed their written statement.

The case of the workman as presented by the union in the statement of claim is that party no. 1 is a nationalized bank and it (union) is a registered trade union and the service conditions of the employees of the bank are inter-alia governed by the provisions of Sastry Award, Desai Award and bipartite settlements signed under the Act and the workman was appointed as a Sepoy after due interview at Armori Branch on 02.01.1989 and since then, he worked as such with artificial breaks given by party no. 1 and he worked for 124 days, 226 days, 294 days, 296 days and 127 days in 1989, 1990, 1991, 1992 and up to July, 1993 respectively and the above days were actual working days of the workman excluding the Sundays and holidays, for which, payment was not made by party no. 1 and the services of the workman were utilized by party no.1 for the work, which was essentially of permanent nature and regular work of sub-staff was extracted from the workman and persons, who were juniors to the workman in service were regularized by party no. 1. It is further pleaded by the union on behalf of the workman that Sastry Award has classified the employees working in the Bank into three categories, viz, permanent, temporary and probationary and as per the definition, employees, who are appointed for the work of permanent nature are termed as permanent employees and clause 20.8 of the Bipartite settlement provides that management should fill in the temporary vacancy within three months and if a temporary employee is eventually selected for permanent absorption, his temporary period of service should be treated as part of the probation period and even though, party no. 1 utilized the services of the workman for the job of permanent nature for a period of more than 1067 days, he was not given the status of permanent employee and his services were not regularized by party no. 1 and such action of party no. 1 was in gross violation of the provisions of Sastry Award and bipartite settlement and tantamounts to unfair labour practice and the breaks given to the workman were artificial breaks, to avoid obligation of law, but however, the workman had put in more than 240 days of work in a calendar year preceding the date of termination and as such, provisions of Section 25-F of the Act were required to be complied with before

the termination of the workman and the termination of the workman without compliance of the provisions of section-25-F amounts to retrenchment and in this view of the matter, the workman is entitled to be deemed as a permanent employee and party no. 1 can keep an employee on temporary basis for a period of not more than three months and therefore, the workman was entitled for the status and benefits of permanent/regular employee, the moment he had complete six months of continuous service.

The union has prayed for a direction to the party no. 1 to regularize the services of the workman in sub-staff cadre on permanent basis, with all consequential benefits and to pay appropriate wages as per bipartite settlement with retrospective effect.

3. The party no.1 in the written statement has pleaded inter-alia that the workman was not appointed as a Sepoy after due interview, but he was engaged on casual basis, as and when, the regular sepoy of Armore branch used to remain on leave or in the event of increase of workload, to maintain the minimum customer service and the services of the workman was utilized in the said branch on various leave vacancies, arose due to the regular staff either being on leave or being absent for other reasons and he was paid on daily wages basis and clause 20.7 of the first bipartite settlement dated 19-10-1966 permits the bank to engage the services of temporary/casual sepoys in the leave vacancy of regular subordinate staff and as such, irrespective of the number of days for which the workman had worked, he is not entitled for regularisation/permanency and the nature of work performed by the workman was that of the permanent employee, in whose leave vacancy he was engaged to work and as the engagement to the workman was on casual basis, there was no question of regularisation of junior persons and the workman is not entitled for claiming the status of a permanent employee or regularisation on the basis of his such engagement and its action in not regularizing the workman was never in violation of any term of Sastry Award or bipartite settlement and as the engagement of the workman was on casual basis, there is question of his claiming seniority. It is further pleaded by party no. 1 that provisions of section 25-F of the Act apply only in the case of retrenchment as defined u/ s. 2(oo) of the Act and as the engagement of the workman was for specific periods in various leave vacancies, his such engagement automatically coming to an end after expiry of such period, as per the stipulation of the contract of employment and the same falls in clause (bb) of section 2 (oo) of the Act and as the present reference does not pertain to any termination of service, the provisions of Section 25-F of the Act are not applicable and such claim is wholly misplaced and casual/temporary workman on completion of six months of continuous service is not entitled to the status and benefits of a permanent/regular employee and

there is absolutely no basis for making such a claim on behalf of the workman and the workman is not entitled to any relief.

4. In support of the claim, the union has examined six witnesses including the workman. The witnesses examined by the union are, (1) Shri Vijay Vishwanath Kapekar (workman), (2) Shri Vinayak Joshi, (3) Shri Shirish A. Damle, (4) Shri Arvind M. Tamhaney, (5) Shri Rajendra M. Dahikar and Shri Somnath Narayan Zarkar

No oral evidence has been adduced by the party no.1.

5. At the outset, I think it necessary to mention that it is settled beyond doubt by the principles enunciated by the Hon'ble Apex Court in a string of decisions that the Tribunal cannot travel outside the terms of reference and the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental thereto.

6. During the course of argument, it was submitted by the union representative that the workman was engaged as a peon on 02.01.1989 at Armori Branch of party no. 1 and the appointment of the workman was made by the branch manager with the consent and approval of the zonal manager and he was sponsored by the employment exchange and the workman was required to perform the duties of a full time peon, although he was paid on daily wages basis and between 2nd January, 1989 to 16th August, 1996, he put in 2082 days of employment and despite the existence of a permanent vacancy, Party No.1 did not regularize the workman and there was violation of the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act and the Party No.1 adopted unfair labour practice. It was further submitted by the union representative that Party No.1 has virtually admitted the allegations made in the statement of claim, in their written statement and from the oral evidence adduced by the workman, which has not been challenged seriously in the cross-examination and the documentary evidence produced by the workman it can be held that the claim of the workman has been fully proved and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all consequential benefits.

7. Per contra, it was submitted by the representative for the party no. 1 that the workman came to be appointed as sepoy at Armori branch on casual basis and against the leave vacancy due to the absence of permanent staff posted in the branch and the workman during his cross-examination has categorically admitted that he was orally directed to join duty and no appointment order was issued and he was engaged on daily wages basis and the workman did not complete 240 days of work in the preceding 12 calendar months of the alleged date of termination and the workman has admitted such facts and the evidence on affidavits of the witnesses examined by

the workman are general affidavits and no reliance can be placed on the same, as no document has been produced by the workman to demonstrate that he had worked for 240 days in the preceding 12 months of the alleged date of termination and the workman has failed to discharge the burden of proving that in fact he had worked for 240 days in the preceding 12 months of the date of termination, so the provisions of the Act are not applicable and adverse inference is not to be drawn for non production of the documents and Party No.1 did not adopt any unfair labour practice and the workman is not entitled to any relief.

In support of the submissions, reliance was placed by Party No.1 on the decisions reported in AIR 2004 SE - 4791 (M.P. Electricity Board Vs Hariram), (2006) 1 SCC - 106 (R.M. Yellatti Vs Asstt. Executive Engineer), (2006) 9 SCC - 697 (Krishna Bhagya Jal Nigam Ltd. Vs Mohd. Raffi), (2006) 9 SCC-132 (Surendra Nagar District Paanchayat Vs Tiangaben), Writ Petition No. 1072/2002 of Hon'ble Bombay High Court, Nagpur Bench, (2006) 6 SCC - 221 (Reserve Bank of India Vs Gopinath Sharma) and AIR 2006 S.C. - 839 (Regional Manager, SBI Vs. Rakesh Kumar).

8. First of all, I will take of the submission made by the union representative regarding drawing of adverse inference against the party no. 1 for non production of the documents. Admittedly, order was passed by the Tribunal, directing the party no. 1 to produce documents as demanded by the union. However, the party no. 1 failed to produce the documents. The terms of reference in this case is regarding the legality or otherwise of the demand of the union for the regularisation of the workman in the services of the Bank. On perusal of the materials on record including the pleadings of the parties, it is found that the claim of the workman about his engagement on 02.01.1989 as a sepoy at Armori branch and that he worked there after has been admitted by the party no. 1 in the written statement. Moreover, copies of most of the documents demanded by the union were produced by the union itself during the course of hearing of the case. In view of such admitted facts and the principles enunciated by the Hon'ble Apex Court in the decisions reported in AIR 2004 S.C-4791 (supra) and (2006) 1 SCC-106 (supra) in regard to drawing of adverse inference for non production of documents by a party, to the case in hand, it is found that there is no need to draw adverse inference against the party no. 1 for the non production of the documents.

9. Though the reference has been made by the Central Government for adjudication of the legality or otherwise of the demand of the union for the regularisation of the workman in the services of the Bank, the union, in the guise of raising the dispute on behalf the workman has tried to challenge the policy adopted by the party no. 1 of engaging persons on temporary basis, inspite of

having number of permanent vacancies in the cadre of sub-staff at different branches of the Bank. In view of the settled principles that the Tribunal cannot travel beyond the terms of reference as already mentioned above and in view of the fact that such specific terms of reference has not been made by the Government, such claim cannot be adjudicated.

10. At this juncture, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in the decision reported in (2006) 6 SCC-221 (supra). The Hon'ble Apex Court have held that :—

“Labour Law-Daily wager-Disengagement-of-Validity-Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held had no right to post.”

11. At this juncture, I also think it necessary to mention about the principles enunciated by the Hon'ble Apex Court in a catena of decisions including the decision reported in AIR 2006 SC-1806 (Secretary, State of Karnataka Vs. Umadevi & others)(Constitutional Bench).

It is settled beyond doubt by the Hon'ble Apex Court that:—

“Rules of recruitment cannot be relaxed and the court/Tribunal cannot direct regularisation of temporary appointees dehors of rules-State owned/operated corporations-Appointment-Modes of appointment -Held regularization cannot be a mode of appointment- Public Sector-Appointment- Mode of appointment-Held, regularization cannot be a mode of appointment- Labour Law-Appointment- Mode of appointment-Held, regularization cannot be a mode of appointment. Regularization- Held, not a permissible mode of appointment.”

It is also settled by the Hon 'ble Apex Court that:

“The term 'temporary employee' is a general category which has under it several sub-categories e.g. casual employee, daily-rated employee, ad hoc employee, etc. A daily-rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post, or to be continued in service, to get absorption, far less of being regularized and getting regular pay. No doubt, there can be occasions when the state or its instrumentalities employee persons on temporary or daily wage basis in a contingency as additional hands without following the required procedure, but this does not confer any right on such persons to continue in service or get regular pay. Unless the appointments are made by following the rules, such appointees do not have any right to claim permanent absorption in the establishment. The Court cannot direct continuation in service of a non-regular appointee. Even if an ad hoc or casual appointment is made in

some contingency the same should not be continued for long, as was done in the present case. A casual or temporary employment is not an appointment to a post in the real sense of the term. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is one that would enable the jettisoning of the procedure establish by law for public employment.”

It is also settled by the Hon'ble Apex Court that:—

“Employment on daily wage - Confers no right of permanent employment- Daily wager appointed on less than minimum wages - Not forced labour - Continued on post for long period - Daily wagers from a class by themselves - They cannot claim parity vis-a-vis those regularly recruited on basis of relevant rules and cannot be made permanent in employment.

Employees were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who were working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate and made permanent in employment even assuming that the principle could be invoked for claiming the equal wages for equal work. There is no fundamental right in those who have been employed in daily wages or temporally or on contractual basis, to claim that they have a right to be absorbed in service. They cannot be said to be holders of a post, since, a regular appointment to be made only by making appointments consistent with the requirements of articles 14 and 16 of the Constitution. The right to be treated equal with the other employees employed on daily wages, cannot be extended to a claim for equally treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of relevant recruitment rules.”

Keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

12. At this juncture, I think it necessary to mention that the terms of reference in this case for adjudication is as to whether the demand of the union for regularisation of the workman is justified or not. There is no reference in respect of the termination of the workman from services. In the statement of claim also, it is not claimed either by the union or the workman that the workman was terminated from services. The date of the termination of

the workman if any has also not been mentioned in the statement of claim.

It is also necessary to mention here that in the statement of claim (filed on 21.03.1995 before the Tribunal), the total number of working days of the workman has been mentioned till July, 1993. There is no mention in the statement of claim that the workman was still working with party no. 1. However, in his evidence on affidavit, the workman has claimed that he worked till 1996. However, the workman has not mentioned as to the date on which, his services were terminated.

13. So for the oral evidence adduced by the union is concerned, the workman, who has been examined as a witness, in his examination-in-chief has stated that he joined in the service of the bank at Armori branch on 02.01.1989, after his selection in the interview and he worked for 2082 days from 1989 to 1996 and he had completed more than 240 days in a year on many occasions and he was performing the duties of permanent class-IV employee in the bank. In his cross-examination, the workman has admitted that he has not filed any document to show that his name was sent by Gadchiroli employment exchange to the bank for interview and though he received a call letter from the bank to appear in the interview, he has not filed any document in regard to the same and no written appointment order was given to him by the bank regarding his appointment and he was directed orally by the bank authorities to join duty and his engagement in the bank was on daily wages basis.

So far the evidence of Shri Vinayak Joshi, Shri Shirish Anandrao Damle, Shri Arvind M. Tamhaney and Shri Rajendra M. Dahikar is concerned, the same is very general in nature and most part of their evidence is regarding the availability of vacancies in the Sub-Staff Cadre in different branches of the Bank of Party No.1 and in respect of the policy adopted by Party No.1 regarding engagement of badlee sepoy/peon instead of filling up the posts by making regular recruitment, which is not the subject matter of adjudication in this reference, as already mentioned above.

In his cross-examination, Shri Joshi had stated that the does not know when the services of the workman was terminated by the bank and he also does not know when the workman joined the service of the bank and he has not submitted any document to show that the workman worked for more than 240 days in any calendar year and he has no proof about the attendance of the workman.

So, the evidence of Shri Joshi is of no avail to the workman.

Shri Damle, in his cross-examination has stated that the Bank has authorized the manager to engage casual employees.

In his cross-examination, Shri Tamhaney has admitted that his affidavit is a general affidavit and the same does not have any specific reference to the concerned workman and the workman was working with the Bank intermittently for several years and he has not mentioned as to the period of engagement of the workman or the number of days he worked for the Bank.

So far the evidence of Somnath Narayan Zarkar is concerned, it is to be mentioned here that in his examination-in-chief, he has stated that the workman was given clerical work routinely by the branch manager. Such statement is quite contradictory from the stand taken in the statement of claim and so also the evidence of the workman himself. Neither the union nor the workman has claimed that the workman was given clerical work. Moreover, in his cross-examination, this witness has admitted that the branch manager engages the daily wagers, as and when required by him and no document has been filed in support of the claim made by him in the affidavit about the appointment of the workman after interview and about the days he worked with the Bank.

14. On perusal of the record, it is found that neither the union nor the workman has filed a single document regarding the appointment of the workman after his due selection in the interview or his appointment against any permanent post.

Taking into consideration the materials on record including the pleadings of the parties and the submissions made by the parties, it is found that the engagement of the workman was not against any permanent vacancy in the branch, but his engagement was on temporary basis as daily wager, as and when basis, against leave vacancy of the permanent sub-staff in the branch. It is also found that the union has failed to prove or show that the workman is entitled for regularisation.

15. It is necessary to mention here that this is not a reference to adjudicate the validity or otherwise of the termination of the services of the workman. So, there is no scope for adjudication about the termination of the workman from services if any.

At this juncture, I think it proper to mention about the principles envisaged by the Hon'ble Apex Court in the decisions reported in (2006) 6 SCC 221 (Supra) and AIR 2006 SC - 839 (Supra).

In the decisions reported in (2006) 6 SCC 221 (Supra) the Hon 'ble Apex Court have held that:

Labour law - Industrial Disputes Act, 1947 - Ss. 25G and 25F- Applicability of Section 25G - Where High Court had not found the workman to have been retrenched within the meaning of S. 25F, held, it erred in holding S. 25G to be applicable.

In the decision reported in AIR 2006 SC - 839 (Supra) the Hon 'ble Apex Court have held that:

"Retrenchment - Respondent employed as messenger on daily wage basis by bank - No appointment letter issued to him - Termination of his service - Reference was not made regarding validity of retrenchment under S. 25G - But for not considering respondent for reemployment under S. 25H - Order of reference did not refer to S. 25G but only to S. 25H - Thus finding by Tribunal that order terminating services of respondent was in violation of S. 25G - Illegal - Further respondent in his application under S. 33-C(2) never raised plea that his services were illegally terminated - In circumstances High Court's view that termination of services of respondent was invalid under S. 25H - Not sustainable as S. 25H proceeds on assumption that retrenchment has been validly made.

Industrial Disputes Act (14 of 1947), schedule 3 item 1- Sastry award, para 497 - Benefit under - Respondent employed by bank on ad hoc basis - no appointment order was issued - Dispensation of his services - Not in violation of para 497.

Para 497 deals with the right of apprentices and has no application to temporary employees like the respondent. Assuming that there was a violation of the Sastry award by the appellant bank in both cases either in not issuing appointment letters or not maintaining a seniority list, service book in respect of temporary employees etc., this would not mean that therefore the respondents had been properly appointed and their services wrongly terminated. Admittedly no procedure whether in law or under any award or settlement was followed either of the respondents in both appeals. No conditions of services were agreed to and no letter of appointment was given. The nature of the respondents' employment was entirely ad hoc. They had been appointed without considering any rule. It would be ironical if the person who have benefited by the flouting of the rules of appointment can rely upon those rules when their services are dispensed with."

Judging the case in hand with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above, it is found that there is no merit in the case of the workman and he is not entitled to any relief. Hence, it is ordered:-

ORDER

The reference is answered in negative and against the union and the workman. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 27 अगस्त 2013

का.आ.1992.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 30/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-08-2013 को प्राप्त हुआ था।

[सं. एल-12011/39/92-आई आर (बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 27th August, 2013

S.O.1992.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/30/1999) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management Bank of India and their workman, which was received by the Central Government on 01-08-2013.

[No. L-12011/39/92-IR (B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/30/1999 Date: 26-06-2013.

Party No. 1

Regional Manager,
Bank of India, Regional Office,
13- Mul Road, Chandrapur.

Party No. 2

Regional Secretary,
Bank of India Workers' Organisation,
Shriram Ward, Ram Mandir, Chandrapur.

AWARD

(Dated: 26th June, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of Bank of India and their workmen, Shri R.R. Neware, Shri T.J. Pardhi, Shri R.M. Dongarkar, Shri S.M. Tupase and Shri P.J. Khobragade, for adjudication, as per letter No.L-12011/39/92-IR (B-II) dated 03.12.92, with the following schedule:-

"Whether the action of the management of Bank of India, Chandrapur is justified in not regularizing the services of S/Sh. R.R. Neware, Shri T.J. Pardhi, Shri R.M. Dongarkar,

Shri S.M. Tupase and Shri P.J. Khobragade? If not, what relief the workmen are entitled to?"

Subsequently, the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the five workmen ('the workmen' in short), filed the statement of claim through their union, "Bank of India workers' Organisation", ('the union' in short) and the management of Bank of India, ("Party No.1" in short) filed their written statement.

The case of the five workmen as presented by the union in the statement of claim is that party no. 1 is a nationalized bank and it (union) is a registered trade union and the service conditions of the employees of the bank are inter-alia governed by the provisions of Sastry Award, Desai Award and bipartite settlements signed under the Act and by the instant reference, the action of the party no. 1 in not regularizing/terminating the services of the five workmen is being challenged.

The further case of the union is that instead of regularizing the services of the five workmen, party no. 1 terminated their services and as a common reference for the action impugned has been made in respect of the five workmen, for the sake of convenience and clarity, facts in respect of each of the five workmen are separately given as follows:—

In respect of Shri R.R. Neware

1. The name of the workman was sponsored by the employment exchange at the instance of the party no. 1 and after interview, he was selected and was engaged for doing the job of sub-staff at Nagbhid branch in Chandrapur District on 12-12-1988 and his engagement was in clear vacancy of Sub-staff/Sepoy created due to transfer of the permanent sepoy from Nagbhid branch to Mindala branch and all the jobs required to be performed by the permanent sub-staff were extracted from the workman till the conciliation was raised before the competent authority and the workman had put in more than 240 days of service in every year right from 1988 and therefore he achieved the status of confirmed employee, but the benefits as per the bipartite settlement were not given to him and as per the provisions of Sastry Award, he is entitled to get the status and benefits of a regular employee and he is entitled to be regularized in the services of the bank as confirmed employee.

In respect of Shri T.J. Parodhi:—

II. The name of the workman was sponsored by the employment exchange at the instance of the party no.1 and after interview, he was selected and was engaged for doing the job of sub-staff at Armori branch on

18-01-1983 and the services of the workman were utilized for 240 days, 283 days, 297 days, 294 days, 266 days and 249 days in 1989, 1990, 1991, 1992, 1993 and 1994 respectively and the workman therefore achieved the status of confirmed employee as per the provisions of Sastry Award and is entitled to such a declaration.

In respect of Shri R.M. Dongarkar

III. The workman was appointed as sepoy w.e.f. 19.07.1988 at Purada Branch in Chandrapur District and the duties extracted from him were that of Sub-Staff and on many days duties of clerk were extracted from him and he was selected after due process of interview and his name was sponsored by the employment exchange and he is still continuing in the same branch, but he was paid wages of Rs. 100 per month and by virtue of having put in more than 240 days in every calendar year and also, in view of the nature of the duties performed by him, he is entitled for regularisation in the services of the bank with consequential benefits, including wages, bonus, leaves and seniority in terms of the Bipartite settlement.

In respect of Shri S.M. Tupase

IV. The name of the workman was sponsored by the employment exchange at the instance of the party no.1 and after interview, he was selected and was engaged for doing the job of sub-staff on 15.03.1990 at Wadholi branch and he is working till today and he had put in more than 1500 days of service till the date of filing of the statement of claim, but he has not been given the status and benefits ought to be given to any confirmed sub-staff of the bank and by virtue of the number of days of service put in by the workman and the nature of duties extracted from him, he is entitled for the status and benefits of confirmed sub-staff, as per the provisions of bipartite settlement.

In respect of Shri P.J. Khobragade

V. The name of the workman was sponsored by the employment exchange at the instance of the party no.1 and after interview, he was selected and was engaged for doing the job of sub-staff on 05.07.1989 at Durgapur Branch initially and subsequently, his services were utilized at different branches like Jathpure gate branch, Chandrapur Main Branch, Regional office, Chandrapur, T.P.S. Durgapur Branch, Padmapur branch and Urjanagar branch on various dates as per the convenience of the bank and he had put in more than 240 days of service in every calendar year and even clerical work was extracted from him on few days, but he was not awarded the benefit of regular employee of sub-staff cadre and by virtue of the service put in by him and the nature of duty performed by him, he is entitled to get the status of confirmed sub-staff by regularizing his services and to receive every benefits like wages, leave, increments in terms of the provisions of Bipartite settlements.

It is further pleaded by the union that it is clear from the provisions of the Sastry Award and the facts that the party no.1 was utilizing the services of the five workmen for performing the duties of permanent nature for years together, without payment of a regular confirmed employee to them, that the party no.1 intended to fill in the permanent vacancy by engaging the workmen, but not to give them benefits of permanency and with malafide intention continued them on daily wages and such action of party no.1 amounts to unfair labour practice.

The union has prayed for a direction to the party no.1 to regularize the services of the five workmen and to grant them the benefits of increments, wages, leave etc. in terms of the bipartite settlement from the first date of appointment.

3. The party no.1 in the written statement has pleaded inter-alia that the five workmen were not terminated as alleged and each of them worked for a fixed tenure basis and their services came to an end at the expiry of each specified period and the workman Shri R.R. Neware was engaged on casual basis as sepy in the leave vacancy caused by the unauthorized absence of the permanent staffs, Shri S.M. Kamdi, Shri Nahe and Shri Meshram posted in the said branch and merely because Shri Neware had worked for more than 240 days in a calendar year does not give him any right to confer with the status of a confirmed employee and to be regularized in services and the workman, Shri T.J. Pardhi was engaged on part time casual basis as a sub-staff at Armori Branch and he was not selected after interview and his appointment was not against the clear vacancy of Shri Baban Sorle as alleged and he had been fully paid for the work performed by him and he is not entitled for the status of a confirmed employee and workman, Shri R.M. Dongarkar was working as a sweeper on casual basis at Purada branch and he was fully paid for the same and the duties of sub-staff were never performed by the said workman and duties of clerk were also never taken from him and he was not selected by it, after the process of interview as alleged and by virtue of working for more than 240 days in a calendar year, he is entitled for confirmation or regularisation.

It is further pleaded by party no.1 that workman, Shri S.M. Upashe was engaged from time to time as a casual sweeper and he did not join the services after undergoing the process of interview and he is not entitled to be confirmed in service or for regularisation and workman, Shri P.J. Khobragade was engaged on casual basis as part time sweeper at Urjanagar extension counter of TPS Durgapur branch for some time and then at Padmapur branch from 1991 and clerical work was not extracted from the said workman and the workman is not entitled for permanency /regularisation for having put in 240 days of service in a calendar year.

The further case of party no.1 is that the five workmen were not engaged for filing up permanent

vacancies and there is no difference in the job of a permanent employee and a casual employee, since the casual employee works in the leave absence of permanent employees and the same does not entitle a casual employee to claim the status of a permanent employee and the claim made on behalf of the workmen is totally misconceived and without any basis and regular procedure is prescribed for making recruitment of permanent employees and in the case of the workmen except Shri Khobragade such procedure was not followed and its action does not amount to unfair labour practice and the workmen are not entitled to any relief.

4. In support of its claim, union has examined nine witnesses in total including four workmen, besides placing reliance on documentary evidence. The other witnesses examined by the union besides the workmen are Shri Vinayak Joshi, Shri Surish Damle, Shri Arvind M. Tamhaney, Shri Rajendra M. Duhikar and Shri Sudhakar Narayan Zarkar. It is to be mentioned here that workman, Shri P.J. Khobragade has not been examined as a witness.

No oral evidence has been adduced by the management.

5. At the outset, I think it necessary to mention that it is settled beyond doubt by the principles enunciated by the Hon'ble Apex Court in a string of decisions that the Tribunal cannot travel outside the terms of reference and the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental there to.

6. At the time of argument, it was submitted by the union representative that the five workmen were engaged as peons on different dates in between the period from 1988 to 1990 at various branches of Chandra pur District and such appointment was made by the branch manager with the consent and approval of the Zonal Manager, Nagpur and their names were sponsored by the employment exchange and the workmen were required to perform the duties of a full time peon, although they were paid on daily wage basis from 1988 onwards and inspite of all the workmen having putting in thousands of days of employment and continuing for years together and existence of permanent vacancies, they have not been regularized and juniors to them have been appointed and regularized by the party no.1 and there was violation of the provisions of section 25-F, 25-G and 25-H of the Act and the party no.1 in their written statement has virtually admitted the claims made by the union and it has not been denied by party no.1 about the engagement of the workmen and the number of their working days in the respective branches and regularisation of juniors to the workmen in service and from the oral evidence and documentary evidence produced by the union in support of its claim and in absence of any rebuttal evidence, it can be held that the union has been able to prove that all the workmen are entitled for their regularization in the services of the bank.

It was also submitted by the union representative that inspite of the direction of the Tribunal, party no. 1 failed to produce the documents as demanded by the union and for the non-production of the documents by the party no. 1, adverse inference has to be drawn against the party no. 1.

It was also submitted by the union representative that after the cross-examination of the workman, Shri Dongarkar was terminated orally by the bank showing scant regards towards the law and therefore, the five workmen are entitled for regularisation and the reference is to be answered in favour of the union.

7. In reply, it was submitted by the representative for the party no.1 that the materials on record clearly show that the engagement of the workmen was on casual basis on daily wages and as a stop gap arrangement, as and when required and payment of wages was being made by the respective branch manager to them and the wages paid were reimbursed to them and such facts have been admitted by the workmen in their cross-examination and they were never appointed against any permanent vacancy by following due procedure of law and no appointment order was issued to them and no evidence has been adduced by the union to show that the workmen are entitled for regularisation and clause 20.7 of the Bipartite settlement of 1966 gives clear right to the bank to engage persons on casual basis in leave vacancy of sub-staff and the burden to prove 240 days of continuous services lies on the workmen and no evidence has been adduced on behalf of the workmen in that respect and the workmen are not entitled to any relief.

In support of the submissions, reliance was placed by Party No . 1 on the decisions reported in AIR 2004 SC - 4791 (M.P. Electricity Board Vs Hariram), (2006) 1 SCC - 106 (R.M. Yellatti Vs Asstt. Executive Engineer), (2006) 9 SCC - 697 (Krishna Bhagya Jal Nigam Ltd. Vs Mohd. Raffi), (2006) 9 SCC - 132 (Surendra Nagar District Panchayat Vs Gangaben), Writ Petition No. 1072/2002 of Hon'ble Bombay High Court, Nagpur Bench, (2006) 6 SCC - 221 (Reserve Bank of India Vs. Gopinath Sharma) and AIR 2006 S.C. - 839 (Regional Manager, SBI Vs. Rakesh Kumar).

8. First of all, I will take of the submission made by the union representative regarding drawing of adverse inference against the party no. 1 for non production of the documents. Admittedly, order was passed by the Tribunal, directing the party no. 1 to produce documents as demanded by the union. However, the party no. 1 failed to produce the documents. The terms of reference in this case is regarding the legality or otherwise of the demand of the union for the regularisation of the workman in the

services of the Bank. On perusal of the materials on record including the pleadings of the parties, it is found that the claim of the workmen about their engagement in different branches and that they worked in different branches has been admitted by the party no. 1 in the written statement. Moreover, copies of most of the documents demanded by the union were produced by the union itself during the course of hearing of the case. In view of such admitted facts and the principles enunciated by the Hon'ble Apex Court in the decisions reported in AIR 2004 S.C-4791 (supra) and (2006) 1 SCC-106 (supra) in regard to drawing of adverse inference for non production of documents by a party, to the case in hand, it is found that there is no need to draw adverse inference against the party no. 1 for the non production of the documents.

9. Though the reference has been made by the central Government for adjudication of the legality or otherwise of the demand of the union for the regularisation of the workman in the services of the Bank, the union, in the guise of raising the dispute on behalf the workmen has tried to challenge the policy adopted by the party no. 1 of engaging persons on temporary basis, inspite of having number of permanent vacancies in the cadre of sub-staff at different branches of the Bank. In view of the settled principles that the Tribunal cannot travel beyond the terms of reference as already mentioned above and in view of the fact that such specific terms of reference has not been made by the Government, such claim cannot be adjudicated.

10. At this juncture, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in the decision reported in (2006) 6 SCC-221 (supra). The Hon'ble Apex Court have held that:-

"Labour Law-Daily wagger-Disengagement of-Validity-Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held had no right to post."

11. At this juncture, I also think it necessary to mention about the principles enunciated by the Hon'ble Apex Court in a catena of decisions including the decision reported in AIR 2006 SC-1806 (Secretary, State of Karnataka Vs. Umadevi & Others)(Constitutional Bench).

It is settled beyond doubt by the Hon'ble Apex Court that:-

"Rules of recruitment cannot be relaxed and the court/Tribunal cannot direct regularisation of temporary appointees de hors of rules- State owned/ operated corporations-Appointment-Modes of appointment - Held regularization cannot be a mode of appointment- Public Sector- Appointment- Mode of appointment-Held, regularization cannot be a mode of appointment- Labour Law- Appointment- Mode of appointment-Held, regularization cannot be a mode of appointment-

Regularization- Held, not a permissible mode of appointment."

It is also settled by the Hon'ble Apex Court that :

"The term 'temporary employee' is a general category which has under it several sub-categories e.g. casual employee, daily-rated employee, ad hoc employee, etc. A daily-rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post, or to be continued in service, to get absorption, far less of being regularized and getting regular pay. No doubt, there can be occasions when the state or its instrumentalities employee persons on temporary or daily wage basis in a contingency as additional hands without following the required procedure, but this does not confer any right on such persons to continue in service or get regular pay. Unless the appointments are made by following the rules, such appointees do not have any right to claim permanent absorption in the establishment. The Court cannot direct continuation in service of a non-regular appointee. Even if an ad hoc or casual appointment is made in some contingency the same should not be continued for long, as was done in the present case. A casual or temporary employment is not an appointment to a post in the real sense of the term. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is one that would enable the jettisoning of the procedure establish by law for public employment."

It is also settled by the Hon'ble Apex Court that:—

"Employment on daily wage - Confers no right of permanent employment- Daily wagger appointed on less than minimum wages - Not forced labour - Continued on post for long period - Daily wagers from a class by themselves - They cannot claim parity vis-a-vis those regularly recruited on basis of relevant rules and cannot be made permanent in employment.

Employees were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who were working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate and made permanent in employment even assuming that the principle could be invoked for claiming the equal wages for equal work. There is no fundamental right in those who have been employed in daily wages or temporally or on contractual basis, to claim that they have a right to be absorbed in service. They cannot be said to be holders of a post, since, a regular

appointment to be made only by making appointments consistent with the requirements of articles 14 and 16 of the Constitution. The right to be treated equal with the other employees employed on daily wages, cannot be extended to a claim for equally treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of relevant recruitment rules."

Keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

12. At this juncture, I think it necessary to mention at the cost of repetition that the terms of reference in this case for adjudication is as to whether the demand of the union for regularisation of the workman is justified or not. There is no reference in respect of the termination of the workmen from services. In the statement of claim also, it is not claimed either by the union or the workmen that the workmen were terminated from services. The dates of the termination of the workmen if any have also not been mentioned in the statement of claim.

13. Perused the evidence adduced by the union in support of its claim. The evidence of the four workmen, who have been examined as witnesses by the union is in the line of the stands taken by the union in the statement of claim.

Workman, Shri Ramesh Ramchandra Neware in his examination-in-chief on affidavit at para-36 has stated that he was terminated by the bank without giving any notice of termination, but such plea was not taken in the statement of claim. The industrial dispute regarding termination of the services of Shri Neware was not raised before the ALC for conciliation and in the terms of reference also nothing has been mentioned about the termination of the workman. Moreover, the workman in his evidence has not mentioned anything about the date, month and year of such termination. It is necessary to mention here about the evidence of witness, Shri Somnath Narayan Zarkar. Shri Zarkar in his evidence on affidavit dated 24.07.2012 has mentioned that Mr. Neware worked with Bank of India, Nagbhid branch till 2011 and now he (workman) is working as business correspondent in the same branch and he has worked for more than 6500 days from his date of joining. The statement of Shri Zarkar clearly shows that Shri Neware is still working with the bank. The evidence of Shri Zarkar also shows that workmen, Shri Pardhi and Mr. Dongarwar are still working at Armori branch and Purada (now khurada) branch respectively. Workman, Shri Neware in his cross-examination has admitted that he was engaged as a casual labour from 12-12-1988.

Workman, Shri Pardhi in his cross-examination has admitted that he does have any evidence to show that he

was interviewed on 18-01-1989 and he does not have any written appointment order.

Workman, Shri Upase in his cross-examination has admitted that he has not filed any document to show that his name was sponsored by the employment exchange and he received any call letter from the bank to appear in the interview and he was sent by the bank for his medical examination and he was medically examined. He has further admitted that no written order of appointment was issued by the bank and he was engaged by the bank on casual basis on daily wages.

Workman, Shri Dongarwar in his cross-examination has admitted that he has not filed any document to show that his name was sponsored by the employment exchange or that he received any call letter from the bank to appear in the interview and he was interviewed by the bank or that he was sent by the bank for his medical examination and he was medically examined. He has further admitted that he was engaged by the bank on casual basis on daily wages and in the vouchers filed by him neither his name nor his signature is there.

14. So far the evidence of Shri Vinayak Joshi, Shri Shirish Anandrao Damle, Shri Arvind M. Tamhaney and Shri Rajendra M. Dahikar is concerned, the same is very general in nature and most part of their evidence is regarding the availability of vacancies in the Sub-Staff Cadre in different branches of the Bank of Party No.1 and in respect of the policy adopted by Party No. 1 regarding engagement of badlee sepoy/peon instead of filling up the posts by making regular recruitment, which is not the subject matter of adjudication in this reference, as already mentioned above.

In his cross-examination, Shri Joshi has stated that he cannot say if any appointment letter was given by the bank to shri R.R. Neware or not and the workman himself can say as to whether any termination order was issued by the competent authority to the said workman.

The witness, Shri Damle in his cross-examination has stated that bank has not given any order to the badlee employees and he has not produced any document to show that the employees were interviewed before their appointment. Shri Damle has further stated that the bank has authorized the Manager to engage casual employees.

The witness, Shri Tamhaney in his cross-examination has stated that his affidavit is a general affidavit and the same does not have any specific reference to the concerned workmen and the workmen were working with the bank intermittently for several years and in his affidavit, he has not mentioned about the periods of engagement of the workmen or the number of days he worked for the bank.

Witness, Shri Zarkar in his cross-examination has stated that for engagement of persons on daily wages in

the branch offices of the bank, the procedure is to call for the names of candidates from the local employment exchange and after making interview of those candidates, to engage the selected candidates in the bank on daily wages and the branch manager the daily wagers as and when required by him.

It is to be mentioned here that in his examination-in-chief at para-9, Shri Binayak Joshi, the General Secretary of the union has stated that Badli employees/daily wages/temporary/casual employees panel was essentially meant to meet emergent situations like unforeseen absenteeism from duty of the regular staff and temporary increase in workload. Such statement of Shri Joshi clearly supports the claim of the party no.1.

15. On perusal of the record, it is found that neither the union nor the workmen have filed a single document regarding the appointment of the workmen after their due selection in the interview or their appointment against any permanent post.

16. Taking into consideration the materials on record including the pleadings of the parties and the submissions made by the parties, it is found that the engagement of the workmen was not against any permanent vacancy in the respective branches, but their engagement was on temporary basis as daily wagers, as and when basis, against leave vacancy of the permanent sub-staff in the branches. It is also found that the union has failed to prove or show that the five workmen are entitled for regularisation.

17. It is necessary to mention here that this is not a reference to adjudicate the validity or otherwise of the termination of the services of the workmen. So, there is no scope for adjudication about the termination of the workman from services if any.

At this juncture, I think it proper to mention about the principles envisaged by the Hon'ble Apex Court in the decisions reported in (2006) 6 SCC 221 (supra) and AIR 2006 SC - 839 (Supra).

In the decisions reported in (2006) 6 SCC 221 (Supra) the Hon'ble Apex Court have held that:

Labour law - Industrial Disputes Act, 1947 - Ss. 25G and 25F- Applicability of Section 25G - Where High Court had not found the workman to have been retrenched within the meaning of S. 25F, held, it erred in holding S. 25G to be applicable.

In the decision reported in AIR 2006 SC - 839 (Supra) the Hon'ble Apex Court have held that:

“Retrenchment-Respondent employed as messenger on daily wage bases by bank - No appointment letter issued to him - Termination of his service - Reference was not made regarding validity of retrenchment under S. 25G - But for not considering respondent for reemployment

under S. 25H - Order of reference did not refer to S. 25G but only to S. 25H - Thus finding by Tribunal that order terminating services of respondent was in violation of S. 25G - Illegal - Further respondent in his application under S. 33-C(2) never raised plea that his services were illegally terminated - In circumstances High Court's view that termination of services of respondent was invalid under S. 25H - Not sustainable as S. 25H proceeds on assumption that retrenchment has been validly made.

Industrial Disputes Act (14 of 1947), schedule 3 item 1- Sastry award, para 497 - Benefit under - Respondent employed by bank on ad hoc basis - no appointment order was issued - Dispensation of his services - Not in violation of para 497.

Para 497 deals with the right of apprentices and has no application to temporary employees like the respondent. Assuming that there was a violation of the Sastry award by the appellant bank in both cases either in not issuing appointment letters or not maintaining a seniority list, service book in respect of temporary employees etc., this would not mean that therefore the respondents had been

properly appointed and their services wrongly terminated. Admittedly no procedure whether in law or under any award or settlement was followed either of the respondents in both appeals. No conditions of services were agreed to and no letter of appointment was given. The nature of the respondents' employment was entirely ad hoc. They had been appointed without considering any rule. It would be ironical if the person who have benefited by the flouting of the rules of appointment can rely upon those rules when their services are dispensed with."

Judging the case in hand with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above, it is found that there is no merit in the case of the workmen and they are not entitled to any relief. Hence, it is ordered -

ORDER

The reference is answered in negative and against the union and the workmen. The workmen are not entitled to any relief.

J.P. CHAND, Presiding Officer